

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 05-N-03928-RAH</b>
	)	
<b>PETER SHAWN JOHNSON,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 189710,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

This matter was initiated by the filing of a Notice of Disciplinary Charges (“NDC”) by the State Bar of California, Office of the Chief Trial Counsel (“OCTC”), alleging that respondent Peter Shawn Johnson (“respondent”) wilfully violated Business and Professions Code section 6103 by failing to file a declaration of compliance with rule 955 of the California Rules of Court as he was ordered to do by the California Supreme Court. The OCTC was represented throughout most of this proceeding by Deputy Trial Counsel Eric H. Hsu (“DTC Hsu”). Respondent did not participate in this proceeding either in-person or through counsel.

For the reasons stated below, the court finds that respondent wilfully failed to comply with rule 955 of the California Rules of Court and thereby violated Business and Professions Code section 6103. The court therefore recommends that respondent be disbarred from the practice of law and that he be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007(c)(4).

**PERTINENT PROCEDURAL HISTORY**

This proceeding was initiated by the OCTC’s filing of a NDC against respondent on October 3, 2005.

A copy of the NDC was properly served upon respondent on October 3, 2005, by certified

mail, return receipt requested, addressed to the official membership records address (“official address”) maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a). The copy of the NDC was returned by the United States Postal Service bearing the stamp: “ATTEMPTED NOT KNOWN.”

On October 5, 2005, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for November 7, 2005. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on October 5, 2005, addressed to respondent at his official address. The copy of said notice was returned to the State Bar Court by the United States Postal Service bearing the stamp: “NOT DELIVERABLE AS ADDRESSED[.] UNABLE TO FORWARD[.] RETURN TO SENDER[.]”

On November 7, 2005, the court held an in person status conference in this matter. Respondent failed to appear either in person or through counsel at the time of the status conference. Thereafter, on November 9, 2005, the court filed an Order Pursuant to In Person Status Conference. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on November 9, 2005, addressed to respondent at his official address. The copy of said order was returned to the State Bar Court by the United States Postal Service bearing a label which read: “RETURN TO SENDER[.] ATTEMPTED - NOT KNOWN[.] UNABLE TO FORWARD[.]”

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), on December 1, 2005, the OCTC filed a motion for the entry of respondent’s default.<sup>1</sup> The motion advised respondent that once the court had found culpability, the OCTC would recommend respondent’s disbarment. The OCTC also requested in its motion that the court take judicial notice of all of respondent’s official membership records addresses. The court grants the OCTC’s request. Also included with the motion was the declaration of DTC Hsu and Exhibit 1, a certified copy of respondent address history as of November

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<sup>1</sup>On November 15, 2005, the OCTC filed a motion for the entry of respondent’s default. Attached to the motion were Exhibits 1-4. Thereafter, on November 21, 2005, the court filed an order noting that the OCTC’s motion for the entry of respondent’s default was defective, as it failed to attach a certified copy of the official records identified as Exhibit 1. The court therefore ordered DTC Hsu to re-file and serve the motion with the proper exhibit attached.

22, 2005.<sup>2</sup> A copy of said motion was properly served upon respondent by certified mail, return receipt requested, on December 1, 2005.<sup>3</sup>

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on December 21, 2005, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders. A copy of said order was properly served upon respondent on December 21, 2005, by certified mail, return receipt requested, addressed to respondent at his official address. The copy of said order was returned to the State Bar Court by the United States Postal Service bearing a label which read: “RETURN TO SENDER[.] ATTEMPTED - NOT KNOWN[.] UNABLE TO FORWARD[.]”

On January 3, 2006, the OCTC filed a brief on the issues of culpability and discipline and requested the waiver of the hearing on this matter.

This matter was submitted for decision on January 10, 2006.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**<sup>4</sup>

Respondent was admitted to the practice of law in the State of California on August 7, 1997, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On June 10, 2005, the California Supreme Court filed Order No. S132498 (“suspension

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<sup>2</sup>When DTC Hsu re-filed the motion, he failed to attach Exhibits 2-4 to his motion, although the motion refers to said exhibits. However, as said exhibits were not attached to the motion which was re-filed on December 1, 2005, the exhibits are not before the court for consideration.

<sup>3</sup>As of December 1, 2005, the date of the declaration of DTC Hsu attached to the OCTC’s motion for the entry of respondent’s default, efforts by DTC Hsu to reach respondent by telephone and electronic mail had been unsuccessful. DTC Hsu, however, wrote to respondent at two possible addresses for respondent suggested by results of a *ZABAsearch* online. As a copy of these letters is not before the court, there is no evidence as to whether the letters called for a response from respondent. Nevertheless, the court notes that the OCTC has not had any contact with respondent since September 7, 2005, the date a 20-day letter was mailed to respondent at respondent’s official membership records address. This 20-day letter was returned by the United States Postal Service bearing the stamp: “UNDELIVERABLE AS ADDRESSED.”

<sup>4</sup>As respondent’s default was entered in this matter, the factual allegations contained in the NDC are deemed admitted pursuant to rule 200(d)(1)(A) of the Rules of Procedure.

order”) requiring that respondent comply with California Rules of Court, rule 955 (“rule 955”), and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the suspension order. The suspension order became effective on July 10, 2005, thirty days after the suspension order was filed.

On or about June 10, 2005, the Clerk of the California Supreme Court properly served upon respondent a copy of the suspension order. Respondent received the suspension order.<sup>5</sup>

The suspension order required that respondent comply with subdivision (c) of rule 955 of the California Rules of Court no later than August 19, 2005, by filing with the Clerk of the State Bar Court an affidavit showing that he fully complied with those provisions of the suspension order regarding rule 955.

On or about July 20, 2005, a probation deputy of the State Bar’s Office of Probation wrote a letter to respondent reminding respondent of the obligation to comply with rule 955 and enclosing an accurate copy of the suspension order as well as a form approved by the State Bar Court Executive Committee for reporting compliance with rule 955.<sup>6</sup> On that same date, the probation deputy mailed the letter and enclosures by placing the documents in a sealed envelope addressed to respondent at his address maintained on the official membership records of the State Bar and depositing it, first-class, postage prepaid, in a facility regularly maintained by the United States Postal Service. The United States Postal Service returned the mailing marked “RETURN TO

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<sup>5</sup>The clerk of the Supreme Court was required to promptly send a copy of the order to respondent once it was filed. (Cal. Rules of Court, rule 29.4(a).) Also, except with respect to arrests, it is presumed that official duties have been regularly performed unless the party against whom the presumption operates *proves* otherwise. (Evid. Code, §§ 606, 660, 664; *In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Thus, because respondent has not proved otherwise, the court must find the Supreme Court Clerk properly sent respondent a copy of the order promptly after it was filed. (*Ibid.*) Also, as there is no evidence in the record that would support a finding to the contrary, the court finds that respondent actually received that copy of the order. (Cf. Evid. Code, §§ 604, 630, 641 [correctly addressed and properly mailed letter is presumed to have been received in the ordinary course of mail].)

<sup>6</sup>Although the NDC refers to the letter being written by a probation deputy of the Probation Unit of the Office of the Chief Trial Counsel of the State Bar of California, on the date the letter was written, the former Probation Unit was known as the Office of Probation.

SENDER, UNDELIVERABLE AS ADDRESSED.”

Respondent did not file with the Clerk of the State Bar Court an affidavit of compliance with rule 955 by August 19, 2005. To date, respondent has not filed with the Clerk of the State Bar Court an affidavit of compliance with rule 955.<sup>7</sup>

“Willfulness” in the context of rule 955 implies simply a purpose or willingness to commit the act, or make the omission, referred to. It requires neither bad faith nor an intent to violate the rule. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.) The Supreme Court has disbarred attorneys whose failure to keep their official address current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) The filing of an affidavit pursuant to rule 955(c) is required even if the respondent does not have any clients to notify. (*Id.*)

Based upon the foregoing, the court concludes that the OCTC has proven by clear and convincing evidence that respondent wilfully failed to comply with rule 955 of the California Rules of Court, as ordered by the Supreme Court in its order filed June 10, 2005, in Supreme Court matter S132498 (State Bar Court Case No. 04-O-12894) by failing to file an affidavit of compliance with rule 955. As a result of respondent’s wilful failure to comply with the order of the Supreme Court, he violated Business and Professions Code section 6103 which provides, in pertinent part, that the wilful violation or disobedience of a court order which requires an attorney to do or forbear an act connected with or in the course of his profession, which the attorney ought in good faith to do or forbear constitutes cause for suspension or disbarment.

#### **MITIGATING/AGGRAVATING CIRCUMSTANCES**

As respondent’s default was entered in this matter, respondent failed to introduce any mitigating evidence on his behalf, and none can be gleaned from the record.

In aggravation, respondent has a record of one prior imposition of discipline. (Rules

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<sup>7</sup>Pursuant to Evidence Code section 452, subdivision (d), the State Bar Court takes judicial notice of its records which reflect that as of the date of the filing of this decision, respondent still has not filed an affidavit in compliance with subdivision (c) of rule 955 of the California Rules of Court.

Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) (“standards”).) On June 10, 2005, the Supreme Court issued an order in Supreme Court matter S132498 (State Bar Court Case No. 04-O-12894) suspending respondent from the practice of law for one year, staying execution of said suspension, and actually suspending respondent from the practice of law for 90 days and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure. In this prior disciplinary matter, in which respondent also failed to participate and in which his default was also entered, respondent was found to have intentionally, recklessly or repeatedly failed to perform legal services competently, failed to respond promptly to reasonable status inquiries of his client, failed to maintain a current membership address, withdrawn from employment without taking reasonable steps to avoid foreseeable prejudice, failed to refund a fee paid in advance that had not been earned, and failed to return a client file after termination of his employment and after his client’s request. In aggravation, it was noted that respondent engaged in multiple acts of misconduct, his conduct significantly harmed his client, and respondent’s lack of candor and cooperation with the State Bar during a disciplinary proceeding was evidenced by his failure to participate prior to the entry of his default. No evidence in mitigation was presented.

### **DISCUSSION**

The primary purpose of disciplinary proceedings conducted by the State Bar is to protect the public, the courts and the legal profession, the maintenance of high professional standards and the preservation of public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

Rule 955(d) provides in part that “[a] suspended member’s wilful failure to comply with the provisions of this rule constitutes cause for disbarment or suspension and for revocation of any pending probation.” Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

Timely compliance with rule 955 of the California Rules of Court performs the critical

function of ensuring that all concerned parties, including clients and co-counsels, opposing attorneys and the courts, learn about an attorney's actual suspension from the practice of law. Compliance with this rule also keeps the State Bar Court and the Supreme Court apprised of the location of attorneys who are subject to their respective disciplinary authorities. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Disbarment is generally the appropriate sanction imposed for wilful violation of rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Similar discipline has been recommended by the State Bar Court Review Department. (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.)

Respondent has demonstrated an unwillingness or an inability to comply with his professional obligations and the rules of conduct imposed on lawyers. This is exemplified by his failure to participate in these State Bar proceedings and by his failure to comply with rule 955. The court also notes that respondent failed to participate in his prior disciplinary matter. More importantly, respondent's failure to comply with rule 955 undermines the basic function that the rule serves, i.e., ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent's disbarment is necessary to protect the public, the courts and the legal profession. His disbarment is also important to the maintenance of high professional standards and to the preservation of public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his wilful and unexplained disobedience of an order of the California Supreme Court.

#### **RECOMMENDED DISCIPLINE**

Based on the foregoing, it is hereby recommended that respondent Peter Shawn Johnson be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in this matter and file the affidavit provided for in paragraph (c) within 40 days after the

effective date of the order showing his compliance with said order.

**ORDER REGARDING INACTIVE ENROLLMENT**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007(c)(4). Said inactive enrollment will be effective three days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

**COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: April \_\_\_, 2006

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RICHARD A. HONN  
Judge of the State Bar Court